

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Waccamaw darter (*Etheostoma perlongum*), Waccamaw killifish (*Fundulus waccamensis*), Waccamaw silverside (*Menidia extensa*), Barrens topminnow (*Fundulus* sp.), and Ouachita madtom (*Noturus lachneri*) to be Endangered species and to identify Critical Habitat for these species. This action is being taken because of their decreased population levels and the threatened modification of their habitat. The proposed action, if completed, would protect the populations of these fishes and their habitat. The Waccamaw darter, Waccamaw killifish, and Waccamaw silverside are native to Lake Waccamaw, N.C. The Ouachita madtom is known only from Arkansas and the Barrens topminnow is presently known only from Coffee County, Tenn.

DATES: Comments from the public must be received by February 28, 1978. Comments from the Governors of States involved with this action must be received by March 30, 1978.

ADDRESSES: Submit comments to Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials received will be available for public inspection during normal business hours at the Service's Office of Endangered Species, Suite 1100, 1612 K Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Mr. Keith M. Schreiner, Associate Director, Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4646.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On March 18, 1975, the Fish and Wildlife Service published a notice in the FEDERAL REGISTER (40 FR 12297-12298) to the effect that a review of the status of 29 fishes was being conducted. The Waccamaw darter, Waccamaw killifish, Waccamaw silverside, and Ouachita madtom were part of that review. As a result of the notice of review, responses were received from North Carolina and Arkansas and a biologist. These comments and supportive documents have been reviewed and a summary is presented below. This information has been considered and is incorporated into the administrative record of this proposal.

The Governor of Arkansas responded to the notice of review and recommended that the Ouachita madtom and yellowcheek darter be listed as Endangered, and the Caddo madtom and paleback darter be listed as Threatened species. The Arkansas Natural Area Plan, which includes a discussion of Endangered and Threatened species in the State, was included with his response.

On professional biologist from Arkansas responded to the notice of review. He suggested that the colorless shiner, Ouachita madtom, yellowcheek darter,

[4310-55]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

**ENDANGERED AND THREATENED
WILDLIFE AND PLANTS**

**Proposed Endangered Status and Critical
Habitat for Five Fishes**

AGENCY: Fish and Wildlife Service, Interior.

and paleback darter should be considered Endangered in Arkansas. He recommended Threatened status for the Caddo madtom.

North Carolina, through the Wildlife Resources Commission, responded to the notice of review. The State's preliminary list of Endangered species indicated that the Waccamaw killifish, Waccamaw silverside, Waccamaw darter, sharphead darter, and longhead darter are Endangered in North Carolina. The orangefin madtom was listed as rare in North Carolina.

Section 4(a) of the Endangered Species Act of 1973 states:

"General—(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

- (1) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (2) Overutilization for commercial, sporting, scientific, or educational purposes;
- (3) Disease or predation;
- (4) The inadequacy of existing regulatory mechanisms; or
- (5) Other natural or manmade factors affecting its continued existence."

This authority has been delegated to the Director.

SUMMARY OF FACTORS AFFECTING THE SPECIES

These findings are summarized herein under the five criteria of Section 4(a) of the Act. These factors, and their application to the five species of fishes, are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* (1) Waccamaw darter (*Etheostoma perlongum*) Proposed Endangered. The Waccamaw darter is known only from Lake Waccamaw in Columbus County, North Carolina. This shallow, mostly sand bottomed, coastal plain lake is spring fed and has very clear water in contrast to the bog-stained "black-water" that is typical of most lakes and ponds in the area. The lake has a surface area of approximately 6,000 acres with a maximum depth of ten feet. The lake level fluctuates a few feet depending on rainfall and the operation of a small dam approximately three feet high at the outlet into the Waccamaw River.

Although the darter still inhabits most of the open sandy areas, it is endangered by the rapidly changing conditions in the lake. The very delicate trophic balance of the lake is being altered by the rapidly growing seasonal tourist and resident population. The area is without a modern waste disposal system and much of the domestic waste seeps into the lake. The lake is further enriched by runoff from fertilizer applied to gardens and lawns along the developed northern lake shore. The excavation of drainage canals around the eastern lake shore for real estate development is further jeopardizing this fish. The increased growth of algae and rooted aquatic plants due to the influx of nutrients could lead to rapid eutrophication which would endanger the endemic Waccamaw darter. An ad-

ditional threat reported by the State of North Carolina is the use of herbicides for vegetation control in canals which drain into the lake. Biologists in North Carolina reviewing the status of the Waccamaw darter assigned it an Endangered status.

(2) Waccamaw killifish (*Fundulus waccamensis*), Proposed Endangered. The Waccamaw killifish is known only from Lake Waccamaw in Columbus County, and Phelps Lake in Washington and Tyrrell Counties, North Carolina. Lake Waccamaw is described above, and Phelps Lake is a similar clear, shallow, sand-bottomed freshwater lake. Phelps Lake has a surface area of more than 9,000 acres.

The Waccamaw killifish inhabits open water over firm sandy bottom frequently along the outer edge of emergent vegetation. The environmental factors affecting Lake Waccamaw are described above. These factors also are jeopardizing the Waccamaw killifish. Biologists in North Carolina reviewing the Waccamaw killifish assigned it an Endangered status.

Phelps Lake, like Lake Waccamaw, is rapidly deteriorating due to the impacts of man's activities. These activities include clearing and drainage of areas adjacent to the lake for real estate and agricultural development. These disturbances have resulted in an increase in the amount of organic material and silt entering the lake. These alterations accelerate the eutrophication process which endangers the Waccamaw killifish.

(3) Waccamaw silverside (*Menidia extensa*), Proposed Endangered. The Waccamaw silverside is known only from Lake Waccamaw in Columbus County, North Carolina.

The silverside inhabits most of the open waters over hard, sandy bottom areas which are devoid of aquatic vegetation. It is endangered by the same factors as the previous two species.

(4) Ouachita madtom (*Noturus lachneri*), Proposed Endangered. The Ouachita madtom is known only from the headwater tributaries of the Saline River drainage of the Ouachita River system in Garland and Saline Counties in southcentral Arkansas. In this area it inhabits gravel-bottomed streams with some sand and cobbles. Stream flow is variable and some headwater tributaries are probably intermittent. Most of the watershed of the upper Saline has mixed pine and hardwood cover which contributes clean silt-free runoff, which in turn helps to maintain high water quality.

The continued existence of the Ouachita madtom is threatened by stream alteration projects and construction activities. One planned new community, Hot Springs Village, would result in massive construction activities in the headwater tributaries of the Saline drainage. Any siltation of streams in the upper Saline drainage would seriously threaten the Ouachita madtom.

The Ouachita madtom was included in the notice of review published in the FEDERAL REGISTER (Vol. 40, No. 53) on March 18, 1975. In response to this review, the State of Arkansas recom-

mended Endangered status for this species.

(5) Barrens topminnow (*Fundulus sp.*), Proposed Endangered. The described Barrens topminnow is believed to be most closely related to the extant whiteline topminnow (*Fundulus albolineatus*) known only from Big Spring in Huntsville, Alabama, and its immediate run in Huntsville, Alabama. The Barrens topminnow inhabits springs and spring-fed creeks in the headwaters of the Duck River and west fork of Hickory Creek, and headwaters of the Coffee River in Coffee County, Tennessee.

The Barrens topminnow's limited habitat is threatened by various alterations of springs and streams. Several localities where the Barrens topminnow was taken in the late 1930's no longer support populations due to destruction of habitat caused by channel alterations and drainage. There are presently three known localities for this species, all in Coffee County, Tennessee.

The Barrens topminnow is considered Endangered by Tennessee.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable.

3. *Disease or predation.* Not applicable.

4. *The inadequacy of existing regulatory mechanisms.* Not applicable.

5. *Other natural or manmade factors affecting its continued survival.* Not applicable.

CRITICAL HABITAT

Section 7 of the Act, entitled "Interagency Cooperation," states:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for conservation of endangered species, threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

An interpretation of the term Critical Habitat was published by the Fish and Wildlife Service and the National Marine Fisheries Service in the FEDERAL REGISTER of April 22, 1975 (40 FR 17764-17766). Generally, Critical Habitat is habitat containing an element which, if lost, would appreciably decrease the likelihood of the survival and recovery of a species or a segment of its population.

The areas delineated do not necessarily include the entire Critical Habitat for these fishes and modifications to Critical Habitat descriptions may be proposed in the future. In accordance with Section 7 of the Act, all Federal departments and agencies would be required to insure that actions authorized, funded, or carried out by them do not result in the destruction

or adverse modification of the Critical Habitat of the Waccamaw darter, Waccamaw killifish, Waccamaw silverside, Ouachita madtom, and Barrens topminnow.

All Federal departments and agencies shall, in accordance with Section 7 of the Act, consult with the Secretary of the Interior with respect to any action which is considered likely to affect Critical Habitat. Consultation pursuant to Section 7 should be carried out using the procedures contained in the "Guidelines to Assist the Federal Agencies in Complying with Section 7 of the Endangered Species Act of 1973" which have been made available to the Federal agencies by the Service.

EFFECT OF THE RULEMAKING

In addition to the effects discussed above, the effects of these determinations and this rulemaking include, but are not necessarily limited to, those discussed below.

Endangered species regulations already published in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. All of those prohibitions and exceptions also apply to any Threatened species unless a special rule pertaining to that Threatened species has been published and indicates otherwise. The regulations referred to above, which pertain to Endangered species, are found at § 17.21 of Title 50, and are summarized below.

With respect to the Waccamaw darter, Waccamaw killifish, Waccamaw silverside, Ouachita madtom, and Barrens topminnow in the United States, all prohibitions of Section 9(a)(1) of the Act, as implemented by 50 CFR 17.21, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate

commerce in the course of a commercial activity, or sell or offer for sale these species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Regulations published in the FEDERAL REGISTER of September 26, 1975 (40 FR 44412) provided for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances. Such permits involving Endangered species are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

Pursuant to Section 4(b) of the Act, the Director will notify the Governors of Arkansas, North Carolina, and Tennessee, with respect to this proposal and request their comments and recommendations before making final determinations.

PUBLIC COMMENTS SOLICITED

The Director intends that the rules finally adopted will be as accurate and effective as possible in the conservation of any Endangered or Threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or the lack thereof) to the species included in this proposal;

(2) The location of the reasons why any habitat of these species should or should not be determined to be Critical Habitat as provided for by Section 7 of the Act;

(3) Additional information concerning the range and distribution of these species.

Final promulgation of the regulations on the Waccamaw darter, Waccamaw killifish, Waccamaw silverside, Ouachita madtom and Barrens topminnow will take into consideration the comments and any additional information received by the Director and such communications may lead him to adopt final regulations that differ from this proposal.

An environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1612 K Street, NW., Washington, D.C. 20240, and may be examined during regular business hours or can be obtained by mail. A determination will be made at the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this proposed rulemaking is Dr. James D. Williams, Office of Endangered Species (202-343-7814).

REGULATIONS PROMULGATION

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. It is proposed to amend § 17.11 by adding, in alphabetical order, the following to the list of animals:

§ 17.11 Endangered and threatened wildlife.

| Species | | Population | Range | | Status | When listed | Special rules |
|----------------------|-----------------------------|------------|----------------------|---|--------|-------------|---------------|
| Common name | Scientific name | | Known distribution | Portion of range where threatened or endangered | | | |
| Darter, Waccamaw | <i>Etheostoma perlongum</i> | NA | USA (North Carolina) | USA (North Carolina) | E | ----- | NA |
| Killifish, Waccamaw | <i>Fundulus waccamensis</i> | NA | do | do | E | ----- | NA |
| Madtom, Ouachita | <i>Noturus lachneri</i> | NA | USA (Arkansas) | USA (Arkansas) | E | ----- | NA |
| Silverside, Waccamaw | <i>Menidia extensa</i> | NA | USA (North Carolina) | USA (North Carolina) | E | ----- | NA |
| Topminnow, Barrens | <i>Fundulus sp.</i> | NA | USA (Tennessee) | USA (Tennessee) | E | ----- | NA |

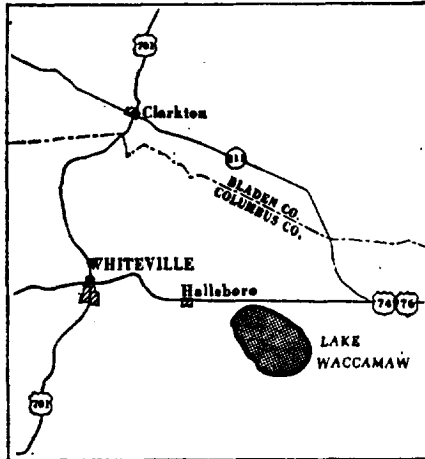
2. Also, the Service proposes to amend § 17.95(e) by adding Critical Habitat of the Waccamaw darter after that of the slackwater darter as follows:

(e) Fishes.

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WACCAMAW DARTER
(*Etheostoma perlongum*)

North Carolina. Columbus County. Lake Waccamaw.



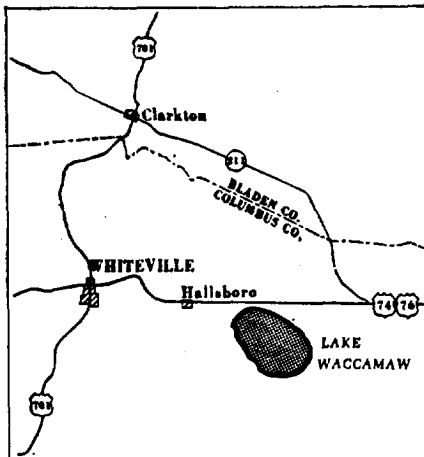
CRITICAL HABITAT FOR THE WACCAMAW
DARTER

3. § 17.95(e) is further amended by adding Critical Habitat of the Waccamaw killifish after that of the yellowfin madtom as follows:

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WACCAMAW KILLIFISH
(*Fundulus waccamensis*)

North Carolina. Columbus County. Lake Waccamaw.



CRITICAL HABITAT FOR THE WACCAMAW
KILLIFISH

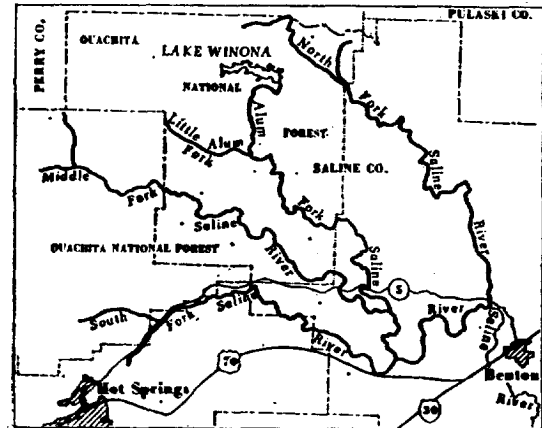
4. § 17.95(e) is further amended by adding Critical Habitat of the Ouachita madtom after that of the yellowfin madtom as follows:

PROPOSED RULES

OUACHITA MADTOM
(*Noturus lachneri*)

Arkansas. Saline and Garland Counties, headwaters of Saline River. North Fork Saline River and its tributaries

and Alum Fork Saline River and tributaries in Saline County. Middle Fork Saline River and its tributaries and South Fork Saline River and tributaries in Saline and Garland Counties, Ark.



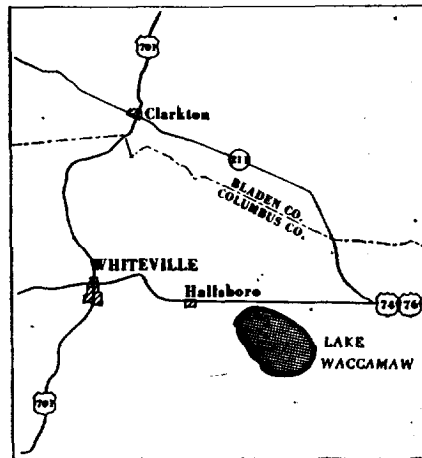
CRITICAL HABITAT FOR THE OUACHITA MADTOM

5. § 17.95(e) is further amended by adding Critical Habitat of the Waccamaw silverside after that of the Alabama cavefish as follows:

* * * * *

WACCAMAW SILVERSIDE
(*Menidia extensa*)

North Carolina. Columbus County. Lake Waccamaw.

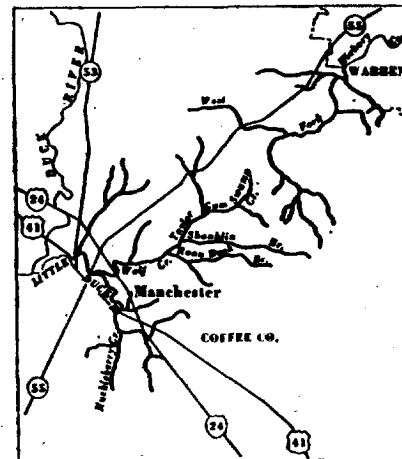


CRITICAL HABITAT FOR THE WACCAMAW
SILVERSIDE

6. § 17.95(e) is further amended by adding Critical Habitat of the Barrens topminnow after spotfin chub as follows:

BARRENS TOPMINNOW
(*Fundulus sp.*)

Tennessee. Coffee County. Little D River and tributaries upstream from U.S. Highway 41 crossing at Manchester. West Fork Hickory Creek and tributaries upstream from the Coffee County line, Tenn.



CRITICAL HABITAT FOR THE BARRENS
TOPMINNOW

NOTE.—The Service has determined this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: December 21, 1977.

LYNN A. GREENWALT,
Director,
Fish and Wildlife Service

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